

MT LEGISLATIVE HISTORY

Chapter 421 19 89

Bill (H) 651 S _____

Original bill & hist. ☒ C

H. Committee on Business & Economic Development S. Committee on Judiciary

Hearing Date(s) Feb 14 ☒ C

Hearing Date(s) Mar 10 ☒ C

_____ ☐ C

Mar 13 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 14 ☒ C

Mar 13 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

2/15 HEARING
 2/16 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/18 FISCAL NOTE RECEIVED
 2/18 2ND READING PASSED 97 0
 2/20 FISCAL NOTE PRINTED
 2/21 3RD READING PASSED 96 0

 TRANSMITTED TO SENATE
 2/28 REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.
 3/10 HEARING
 3/18 COMMITTEE REPORT--BILL CONCURRED
 3/20 2ND READING CONCURRED 48 0
 3/22 3RD READING CONCURRED 49 0

 RETURNED TO HOUSE
 3/29 SIGNED BY SPEAKER
 3/29 SIGNED BY PRESIDENT
 3/30 TRANSMITTED TO GOVERNOR
 4/04 SIGNED BY GOVERNOR
 CHAPTER NUMBER 439 EFFECTIVE DATE: 4/04/89

HB 651 INTRODUCED BY SPAETH, ET AL.
 PROVIDE THAT COMPLIANCE WITH NATIONAL ELECTRICAL
 SAFETY CODE STANDARD ESTABLISHES DUE CARE IN
 DEFENSE OF NEGLIGENCE CLAIM ALLEGING A
 VIOLATION OF THAT STANDARD

2/11 INTRODUCED
 2/13 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 2/14 HEARING
 2/14 COMMITTEE REPORT--BILL PASSED
 2/18 2ND READING PASSED 70 29
 2/21 3RD READING PASSED 63 32

 TRANSMITTED TO SENATE
 2/28 REFERRED TO JUDICIARY
 3/10 HEARING
 3/14 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/15 2ND READING CONCURRED 47 0
 3/17 3RD READING CONCURRED 47 0

 RETURNED TO HOUSE WITH AMENDMENTS
 3/31 2ND READING AMENDMENTS CONCURRED 84 11
 4/01 3RD READING AMENDMENTS CONCURRED 86 7
 4/06 SIGNED BY SPEAKER
 4/06 SIGNED BY PRESIDENT
 4/06 TRANSMITTED TO GOVERNOR
 4/08 SIGNED BY GOVERNOR
 CHAPTER NUMBER 471 EFFECTIVE DATE: 10/01/89

HB 652 INTRODUCED BY BROOKE, ET AL.
 REQUIRE LENDER TO PAY INTEREST ON MORTGAGE RESERVE
 ACCOUNT

2/11 INTRODUCED
 2/13 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 2/13 FISCAL NOTE REQUESTED
 2/17 HEARING
 2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/18 FISCAL NOTE RECEIVED

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Economic Development COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
577	2/6	2/10	2/13			2/13					
585	2/6 with 6 amendments	2/10									
591	2/7	2/17	2/17			2/17					
565	2/7	2/14	2/21			2/21					
611	2/9	2/13	2/14			2/14					
613	↓	2/15	2/15		2/15						
617	↓	2/16	(2/17	TABLED)							
600	2/10	2/14	2/17	2/17							
624	↓	2/17	2/17		2/17						
626	↓	2/15	2/17			2/17					
627	↓	2/16	2/20	TABLED							
483	2/9	2/8	2/14			2/14					
635	2/11	(2/15	TABLED)								
651	2/13	2/14	2/14	2/14							

a separate sheet for Senate Bills, House Bills, and Resolutions.

1 *HOUSE* BILL NO. *651*
2 INTRODUCED BY *Spacht* *By* *V. Valkenburg*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
5 COMPLIANCE WITH NATIONAL ELECTRICAL SAFETY CODE STANDARDS
6 ESTABLISHES DUE CARE IN THE DEFENSE OF A NEGLIGENCE ACTION;
7 AND AMENDING SECTION 69-4-201, MCA."
8

1 negligence action."

-End-

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 69-4-201, MCA, is amended to read:

11 "69-4-201. Application of national electrical safety
12 code. The national electrical safety code standards shall
13 govern all future construction involving wires for power,
14 heat, light, telephone, telegraph, or signal transmission or
15 reception. Except as provided in 69-4-203, electrical
16 construction of overhead and underground electrical supply
17 and communication lines in the state shall be in conformity
18 with the rules set forth in the national electrical safety
19 code approved by the American national standards institute
20 as published by the institute of electrical and electronic
21 engineers. The national electrical safety code shall
22 furnish construction standards and shall be enforced by the
23 public service commission. Proof of compliance with the
24 requirements of applicable national electrical safety code
25 standards establishes due care in the defense of a

MINUTES

MONTANA HOUSE OF REPRESENTATIVES

51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 14, 1989, at
8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 483

Motion: Rep. Bachini moved DO PASS and moved the amendments.

Amendments, Discussion, and Votes: Paul Verdon explained the
amendments. See the attached copy. The amendments DO PASS

Recommendation and Vote: HB 483 DO PASS as amended unanimously.

DISPOSITION OF HOUSE BILL 418

Motion: Rep. Bachini made a motion to table the bill.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 418 TABLED unanimously.

and pass the bill out and let Rep. Daily talk about it on the floor. Rep. Pavlovich said if you take this out they can get 6 or 7 percent but otherwise they will get 8 percent. The amendment failed 13-3.

Recommendation and Vote: HB 446 DO PASS 11-5 vote.

HEARING ON HOUSE BILL 651

Presentation and Opening Statement by Sponsor:

Rep. Spaeth said this bill would provide for compliance with national electrical safety code standards establishes due care in the defense of a negligence action; and amends Section 69-4-201, MCA.

Testifying Proponents and Who They Represent:

Art Wittich, Butte
Ted Neuman, MT Council of Cooperatives
Gene Pidgeon, MDU Resources
Barry Hjort, US West Corp.
Gene Phillips, Pacific Power and Northwestern Telephone
Vicki Archibald, PSC
H. S. Hanson, Consulting Engineers, Helena

Proponent Testimony:

Mr. Wittich stated that this bill was really about fairness. It amends the existing statute which already incorporates the NESC into the Montana codes.

Gene Phillips said both the corporations he represents support this bill.

Gary Hjort stated that US West support this bill.

Mr. Neuman said the cooperatives support this bill.

Mr. Pigeon stated that MDU Resources support this bill.

Mr. Hanson said the consulting engineers support this bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Spaeth wanted to emphasize that this is an important bill even though it is a short bill. The standards for NESC are not easy standards, they are rigorous standards. It is a bill that is fair to both sides and I urge your support.

DISPOSITION OF HOUSE BILL 651

Motion: Rep. Smith moved DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 651 DO PASS unanimously.

HEARING ON HOUSE BILL 565

Presentation and Opening Statement by Sponsor:

Rep. Pavlovich, House District 70, Butte. HB 565 is the infrastructure bill. First this bill will maintain the coal board as distribution of local impact funds in the mining areas of eastern Montana. Second, it will establish a separate infrastructure or public works account under the coal board to provide grants and loans to all cities and counties across the state. See exhibit 2 for more details.

Testifying Proponents and Who They Represent:

Alex Hanson, MT League of Cities & Towns
Larry Anderson, Assistant to the Mayor, Missoula

Proponent Testimony:

Mr. Hanson stated that this bill is a small start on a big

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 14 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT

COMMITTEE

DATE 2/14/89 BILL NO. 651 NUMBER

NAME	AYE	NAY
Bob Pavlovich		
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Steppler		
Fred Thomas		
Norm Wallin		

TALLY

16

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION:

do pass

BUSINESS

BILL NO. 565 600 65/ DATE

2 114 189

SPONSOR Paulovich Vincent Spaulth

Please put the
bill numbers. The

5651

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

February 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic
Development report that HOUSE BILL 651 (first reading copy --
white) do pass .

Signed: _____
Robert Pavlovich, Chairman

BILL STATUS SYSTEM
RPT 52

STATE OF MONTANA
MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
CURRENT STATUS OF ALL BILLS EVER REFERRED TO (S) JUDICIARY

PAGE NBR..... 37
TIME: 12:33
DATE: 05/02/89

CHAIRMAN--BRUCE CRIPPEN
SECRETARY--ROSEMARY JACOBY
NORMAL SCHEDULE==> SITE: ROOM 325

COMMITTEE--(S) JUDICIARY
DAYS: M,T,W,T,F TIME: 10:00 A.M.

OFFICE--ROOM 412

REFER	NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE
BILL == DATE == LATEST DATE/ACTION ON BILL	
HB 489 02/16 04/12--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 10/01/89 TITLE-DELETE IMPENDING EXPLOSION WARNING AS DISORDERLY CONDUCT
HB 491 02/17 03/29--(H) CHAPTER NUMBER SPONSOR: SPAETH, GARY	EFFECTIVE DATE: 10/01/89 TITLE-REQUIRING COURT TO CONSIDER EFFECT OF JOINT CUSTODY ON CHILD'S EDUCATION
HB 492 02/16 03/30--(H) CHAPTER NUMBER SPONSOR: SPAETH, GARY	EFFECTIVE DATE: 10/01/89 TITLE-UNIFORM DISPOSITION OF COMMUNITY PROPERTY AT DEATH ACT
HB 495 02/28 04/08--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 10/01/89 TITLE-CLARIFY MEANING OF "POSSESSION" IN INTOXICATING SUBSTANCE POSSESSION CRIME
HB 504 02/28 04/04--(H) CHAPTER NUMBER SPONSOR: DAILY, FRITZ	EFFECTIVE DATE: 04/04/89 TITLE-CLARIFY THAT HOMICIDE PROSECUTION MAY BE STARTED AT ANY TIME
HB 511 02/28 04/24--TABLED IN COMMITTEE SPONSOR: MERCER, JOHN	TITLE-REVISE SMALL TRACT FINANCING ACT--NO DEFICIENCY ON RESIDENTIAL PROPERTY
HB 534 02/28 04/04--(H) CHAPTER NUMBER SPONSOR: SWYSGOOD, CHARLES	EFFECTIVE DATE: 10/01/89 TITLE-AMENDMENT TO INTERSTATE COMPACT ON JUVENILES
HB 544 02/28 04/08--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 04/08/89 TITLE-EXPAND SCOPE OF STATE'S APPELLATE RIGHTS IN CRIMINAL CASES
HB 568 02/28 04/04--(H) - SPONSOR: MERCER, JOHN	EFFECTIVE DATE: (S 1-4, 6, 8-17) TITLE-JUVENILE LAWS ON DETENTION OF CERTAIN YOUTH
HB 571 02/28 04/05--(H) CHAPTER NUMBER SPONSOR: BROWN, DAVE	EFFECTIVE DATE: 10/01/89 TITLE-REVISE ELIGIBILITY REQUIREMENTS FOR SUPERVISED RELEASE PROGRAM
HB 576 02/28 04/11--(H) CHAPTER NUMBER SPONSOR: ROTH, RANDE	EFFECTIVE DATE: 07/01/89 TITLE-CHANGE USED KENO MACHINE LICENSING REQUIREMENTS
HB 578 02/28 04/01--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 10/01/89 TITLE-OBJECTION PROCESS TO VISITATION RIGHTS OF PARENT CONVICTED OF CERTAIN CRIMES
HB 582 02/28 04/24--TABLED IN COMMITTEE SPONSOR: EUDAILY, RALPH	TITLE-DUI OFFENDERS MAY BE ORDERED TO INSTALL IGNITION LOCKING DEVICES
HB 592 02/28 04/05--(H) CHAPTER NUMBER SPONSOR: DRISCOLL, JERRY	EFFECTIVE DATE: 10/01/89 TITLE-PAYMENT OF ARSON SUPPRESSION COSTS AND OF TAXES ON THE PROPERTY
HB 594 02/28 04/01--(H) CHAPTER NUMBER SPONSOR: THOMAS, FRED	EFFECTIVE DATE: 10/01/89 TITLE-REVISE DISTRICT JUDGE RESIDENCY
HB 598 02/28 03/27--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 10/01/89 TITLE-GRANT CRIME CONTROL BOARD AUTHORITY OVER DETENTION CENTERS
HB 606 02/28 04/05--(H) CHAPTER NUMBER SPONSOR: GRADY, ED	EFFECTIVE DATE: 10/01/89 TITLE-ALLOW PARENTS TO PROVIDE NON-INTOXICATING AMOUNTS OF ALCOHOL TO THEIR CHILD
HB 649 02/28 04/04--(H) CHAPTER NUMBER SPONSOR: KOEHNKE, FRANCIS	EFFECTIVE DATE: 10/01/89 TITLE-INCREASE THE AMOUNT OF A CLAIM THAT CAN BE BROUGHT IN SMALL CLAIMS COURT
HB 651 02/28 04/08--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89

1 HOUSE BILL NO. 651
2 INTRODUCED BY Spence W. Valkenburg
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
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15 reception. Except as provided in 69-4-203, electrical
16 construction of overhead and underground electrical supply
17 and communication lines in the state shall be in conformity
18 with the rules set forth in the national electrical safety
19 code approved by the American national standards institute
20 as published by the institute of electrical and electronic
21 engineers. The national electrical safety code shall
22 furnish construction standards and shall be enforced by the
23 public service commission. Proof of compliance with the
24 requirements of applicable national electrical safety code
25 standards establishes due care in the defense of a

1 negligence action."

-End-

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice Chairman Al Bishop, on March 10,
1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Vice Chairman Al Bishop, Senators Tom
Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren
Jenkins, R. J. "Dick" Pinsoneault, John Harp, and Bill
Yellowtail

Members Excused: Chairman Bruce Crippen

Members Absent: None

Staff Present: Valencia Lane, Staff Attorney and Rosemary
Jacoby, Secretary

Announcements/Discussion: There were none.

HEARING ON HOUSE BILL 349

Presentation and Opening Statement by Sponsor:

Representative Bill Strizich of Great Falls
representing District 41 said that House Bill 349 was
drafted at the request of the Great Falls police
department. Law enforcement officials have the power
to seize vehicles which have been determined to be
involved in the marketing of dangerous drugs. When
this occurs in conjunction with arrest and conviction,
under current law the police in cities and county are
required to dispose of the property through the sheriff
in the respective county. This bill allows the
property to be disposed of by the respective city
government.

List of Testifying Proponents and What Group they Represent:

Larry Renman, Detective Sergeant, Great Falls Police
Department

List of Testifying Opponents and What Group They Represent:

There were none.

Sheriff Chuck O'Reilly, said he would like to enlarge on the area of liability. He said that one of the fastest growing areas for law suits originated from problems that developed in jails. One of the reasons, he said, was that the suits had been extremely successful. And, he added, one of the reasons they have been successful was that jailers had not been adequately trained. Passage of this bill will allow state-wide training and will allow local officers to contact the Academy for updated training. He urged passage of the bill.

Questions From Committee Members: Senator Beck asked if this would require additional FTEs, and Rep. Strizich said no, because the training system is in place, and that the same people would be doing the job. He also said the fiscal impact would be negligible. Clayton Bain agreed.

Senator Jenkins said the local departments complained when training took personnel away from their jobs in small, rural counties. Clayton Bain said there presently was a 40-hour basic training course at the academy, as well as 16-hour, on site training programs which is available to all 45 jails in the state. There would only be lost time if the jailer went to the academy for training, and that on-site training was only done in 16 and 24 hour segments.

Closing by Sponsor: Rep. Strizich said he didn't have a sponsor, but would obtain one. He closed.

HEARING ON HOUSE BILL 651

Presentation and Opening Statement by Sponsor:

Representative Gary Spaeth of Joliet, representing District 84, opened the hearing. He said there would be quite a few people testifying, including many lawyers. He said it was not necessarily a lawyers bill, and that it makes good, common sense to have the bill in front of the committee to gain a non-legal viewpoint as it was important for the operation of the utility industry in the state of Montana. It appears primarily, he said, as a result of the Martel Decision which was handed down about a year ago, he said. That decision, he stated, overturned the law that established the National Safety Code as standards. He

said there would be strong opposition and a couple of amendments would be offered by the Montana Trial Lawyers, which he would oppose. Rep. Spaeth said that he had a short amendment he would propose (Exhibit 6). He called attention to the underlined language on page 1, and 2. He said the National E.S.C. was important in establishing standards. If the bill was not passed, the thrust of the Martel Decision would continue, resulting in additional liability for the utility industry. While electricity is a semi-dangerous commodity, he stated, for the most part, people had learned to be cautious. In cases where injury occurred, he indicated that more care could have been taken. However, concerns had been raised, he said. He said he had sued in behalf of the state of Montana, the Montana Power Company for problems resulting in the Pattee Canyon fire. It seemed there was violation of the N.E.S.C. was settled out of court. He had a problem with line 1 on page 2, and suggested inserting at the end of the sentence "alleging a code violation". He thought that would place some limits on the scope and application of the bill. (See Exhibit 6)

List of Testifying Proponents and What Group they Represent:

Bob O'Leary, attorney for the Montana Power Company
John Alke, Montana Dakota Utilities
Ted Neuman, Council of Coops and Montana Petroleum
Marketers
Jay Downen, Cooperative Electric, NECA/Montana
H. S. Hanson, Montana Technical Council
Barry Hjort, U. S. West Communications
James Nelson, Glacier Electric Coop
Gene Phillips, Pacific Power and Light and Northwestern
Telephone
Bert Holmes, Sidney Electric Cooperative

List of Testifying Opponents and What Group They Represent:

Eric Thueson, self
Robert Peterson, self
Michael Sherwood, Montana Trial Lawyers Association

Testimony:

Bob O'Leary said this bill was an attempt to balance claimants and utility companies through use of the National Electrical Safety Code. The amendment would do what simple justice would require, he said. The Martel decision held that the N.E.C.A. code provisions apply, not only to construction standards, but also to maintenance and design

standards. He said there were many unique holdings in the Martel Decision, some of which were favorable to the plaintiffs bar associates requiring the court to advise and instruct the jury on comparative negligence.

The Martel Decision arose out of a young man who was out on a party, having a few beers with some of his buddies when he climbed up the lattice work of a tower near Whitehall, MT in 1982 or 1983. The tower had been an old Milwaukee Railroad 100 KV line, he said. The young man reached out, perhaps didn't touch it, but electricity probably arced and he received an electrical shock. He was wearing a polyester-celane type of shirt which melted on his body causing severe injury to the upper part of his body. The power company's defense was that the N.E.C.A. safety code was implacable only as far as negligence per se was concerned to construction. The power company hadn't built the line but had acquired it from the Milwaukee Railroad, he said. The reason the power company took that defense was because of a case called Barmeier vs. the Montana Power Co. in 1983 which arose out of the Pattee Canyon fire near Missoula in the late 70s. In that case, the Supreme Court held that the NECA safety code was a construction standard only, didn't apply to maintenance and design and that the violation of the code for construction was negligence per se. In Martel, the jury found in favor of the defendant, the Montana Power Company, on comparative negligence. They found Martel 75% negligent and the Montana Power 25% negligent, he said. Pete Strong of Great Falls, the attorney, did an excellent job when the case was heard in January 1988 and it was an extension of the Martel case in March 1988. The court held that the NECA code applied not only to construction, but also to maintenance and design. It held that violation was negligence per se, provided that the violation of the code was the approximate cause of the injury to the plaintiff. So the court expanded the decision of the Barmeier case; it expanded the history of the NECA code which had been part of Montana law since 1917 and it closed the standard that any violation of the code or any of its provisions would constitute negligence per se. The court went one step further in the Barmeier case, he continued, in saying that if the circumstances are dangerous beyond requirements of the code that the court should instruct the jury that that, also, constituted negligence. The result of the Martel case, as far as the industry was concerned, was that nobody could define whatever additionally should be done in any given case whether it was the overhead lines, substation installation, grounding, underground line. The uncertainty of the Martel decision renders the utility defenseless in any given case, he stated. Maybe lines are 20 feet high, two feet higher than code, he said, but somebody might decide they should be 24 feet high. He felt the industry was entitled to some

certainty, and he thought the Spaeth amendment would grant that. The first one passed by the House, said that

compliance with the NECA safety code constituted due care in defense of any negligence actions and the second amendment proposed the day of the senate hearing said that any negligence action alleging code violations replaces the code. Usually, he said, actions mention other common law theories of negligence, and all these will remain intact. He said the code was drawn up by representatives of business, labor, utility industry, all kinds of government agencies and is revised every three years, the next being the 1990 edition. He urged a do pass recommendation of the bill.

John Alke said he would like to start out with an example to illustrate the problem. If a small power line was constructed across farm land and some young children were playing with a piece of culvert pipe, touched the power line and were electrocuted. If the accident were caused by the some fault of the power line design, the power company would be held liable. However, if the power company is not at fault in construction of that line, the fact that the children were injured, should not be grounds for damages. In this area the NECA safety code has assumed a fairly important role defining what should have been done. In the example case, he said, the code would specify the minimum distances the power line should be above the ground. If the power company had failed to have the lines above the minimum, we would have no dispute saying the company was at fault and should pay damages, he said. On the other hand, if the power company had complied with the code when it built that line, the question would arise why then, if that was the issue in the case, should the company be liable. Remember, in the construction business, not just the power industry, you must know the standards. If you know and comply with the standards, and if someone is injured, shouldn't the standard be assessed, he questioned. He suggested assuming there was a status quo in light of the Martel Decision. The plaintiff, he assured the committee, would find an expert who would testify regardless of how high the lines were above the ground, that the lines were not a reasonable height. If the status quo prevailed in the hypothetical case, he said, the mere fact that the plaintiff could find an expert who would say it should be higher will allow the case to go to jury. A jury, then, would determine after the fact, because of the battle of great experts, that the power lines should have been higher off the ground. But, at the time the line the power lines were constructed, the power company would have had no knowledge of this expert's theory. So, the forewarning is critically important, he said. He had been taught, he said, the legislative standard, which was one of the things he wanted to address. The reason for the minimum standard, if this

body decided to make the standards higher, there would be an exception to the code, he said. That would be the judgement of the legislature, and would also give advance warning to the power company that this state required different standards. An after-the-fact expert statement should not be allowed. It would assess fault, he felt. Only if the power line was improperly constructed, should the power company be considered at fault, he said. But if the power line construction follows the only published standard available, it should be held not at fault. As to the amendments of the Montana Trial Lawyers, he suggested that they were disingenuous, he said. Acceptance of the Trial Lawyers amendments were the same as killing the bill, he added, as they were the standards in place at present. Now, it was a one-way door, according to Mr. Alke, with the plaintiff claiming a violation of the code, and the power company claiming no violation. The amendment that Rep. Spaeth proposed, he said, was to address the concern that the power companies were looking for was an excuse --that the bill pursuant to the code, there was no possible cause of action that can be raised against the power company. That is not the intent of the bill, he stated. It only attempted to address the issue of code compliance. He said in working on the bill, he found there were other cases, such as a power line having been built across the Missouri River. The power lines had been constructed in compliance with electrical safety code, but it had been constructed without the necessary permit from the Corps of Engineers. They (the Corps) are required to look at the extra special circumstances such as recreational use. He agreed that would be a reasonable complaint. The power line had not been properly permitted and would make the power company liable, he said. All that the bill was attempting to do, he said was, for a rule that would permit the power companies to build a power line in accordance with applicable standards granting some sort of protection against "should the lines have been X number of feet". He asked for the committee's favorable report.

Ted Neuman said the bill proposed a common sense approach to the issue. If construction meets the standards, then the company should not be liable, he said, and should be able to use that for defense. He thought there was too much litigation in this country now. He urged adoption of the bill.

Jay Downen said he represented about 300,000 rural Montanans served by 40 small businesses around the state. He said his electric coop has about 80,000 miles of line and had great concern with the issue. He said his company had to buy their insurance, and was subject to the whims of the insurance companies. He said they badly needed the legislation to assure some predictability of insurance

rates. They were willing to abide by the NECA standards, but asked that they at least have them to abide by. NECA provides safety training, he stated, and his budget for providing safety services has nearly doubled in the last 4 years. Their budget for public awareness and public liability has jumped from 5% to 50% and they have 8 inspectors working for them. He felt the industry deserved a right of redress. He urged support of the bill.

H. S. Hansen said that the designers have to stamp the plans that are turned out to certify that they meet the codes. He thought there should be some protection for the designers.

Barry Hjort said he wanted to indicate that input from several sources had been given in drawing up the codes, not just the construction industry. He urged support of the bill.

James Nelson said his coop serves, farmers, ranchers and Indian reservations. He said the Martel case caused a raise in insurance which had to be passed on to the customers who could ill afford it. He said the new code which will come out next year will eliminate references to minimum standard, but will say basic standard. He felt that utilities who follow that should have a right to protection.

Gene Phillips asked for support of the bill in the name of his utility company.

Bert Holm, manager of a rural electric cooperative in Sidney, said they have 1800 miles of line, serving 4,000 consumers. He said they have the oldest energizing property in the state, dated 1935. The company has used the REA specifications. He told of an accident occurring when an oil company employee was injured in attempting to move power lines out of the way without asking for help from the cooperative. He was afraid that, without protection, their company would be liable for the injury.

Eric Thueson appeared as the first opponent to the bill. He presented written testimony to the committee (Exhibit 7). He also called attention to the highlighted language included in the exhibit and concluded by urging the committee to give a Do Not Pass recommendation.

Robert Peterson presented his testimony to the committee and submitted a written copy (see Exhibit 8). He said that the electrical industry is setting standards for themselves. He called attention to a booklet whose forward said that the American national standard could be revised or withdrawn at any time. He felt this meant that the industry would always be in a state of flux.

Michael Sherwood read written testimony into the record (see Exhibits 9, 10 and 11). He said that electricity was dangerous and that allowing the electrical industry to control its own fate. He submitted proposed amendments (see Exhibit 12). He suggested changing wording on line 4 of the amendments from "charge of negligence" to "liability for". He said this was the "black letter law" cited by Mr. Thueson, found in the American Encyclopedia of Law, and is the general law throughout the United States at present. Martel adopted this law, he said.

Questions From Committee Members: Senator Halligan asked why not use the Sherwood amendments. Rep. Spaeth said he thought they were nearly the same as the Martel Decision, and didn't think they struck a balance at all.

Senator Pinsoneault asked if the code addressed the hypothetical playground situation mentioned in Mr. Theuson's testimony. Mr. Thueson said he didn't think so, but felt there had to be a recognition that the power company had experts and should know how to guard against injuries. Senator Pinsoneault felt there wouldn't be a barred recovery unless that situation was specifically covered by the code.

Mr. Theuson said the way the bill was originally written was unclear and the amended version was ambiguous. He suggested saying "this is not a barred recovery if all the circumstances indicate negligence on the part of the electrical company".

Senator Jenkins referred to the hypothetical school and asked if the school was there first or the power lines. Mr. Thueson said he didn't see the difference, as they should immediately decide whether changes were needed to constitute "reasonable care".

Senator Jenkins asked what was the responsibility of the school and Senator Mazurek said he thought that "accepted good practice given the local conditions" was addressed in the code, and already provided the exemption suggested by the Mr. Thueson. Mr. Thueson said the legislature would have to establish what "reasonable care" was and not the power company. He said that the codes were subject to revision. Senator Mazurek said that part of the codes allowed lawyers to raise a question.

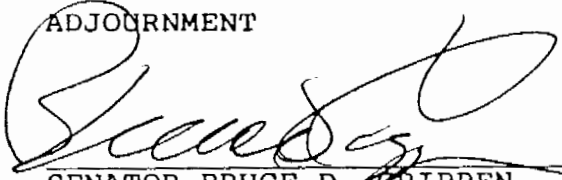
Senator Harp asked Mr. O'Leary to comment on the testimony that the power company was eroding the standards and the industry was setting the standards. Mr. O'Leary said that every revision actually makes the standards more stringent.

He also said it was erroneous that the 1987 revision eliminated the protection granted by the 1977 code. They were actually eliminated in 1981, '84 and '87. In 210, he said, they included every definition of references to other safety code, references to safety codes and grounding methods. In section 211, the code committee said, if the '87 edition made it mandatory that Section 1, 2, General Rules of the '87 edition, all electrical installations "shall be" designed, constructed and maintained to meet the requirements of the rules. As to the writing of the codes, he said the Electrical Association of Electrical Inspectors, the Brotherhood of Electrical Workers, all of the government agencies, electrical contractors, National Safety Council Edison Electric Institute and all of the state regulatory commissions were represented on the code committee. He said the codes established a balance, and that they didn't eliminate liability from negligence.

Closing by Sponsor: Rep. Spaeth thanked the committee for a good hearing. He said no one was trying to overturn good law, he was just trying to give the utility companies some degree of certainty, to return what had previously been given them. Martel does represent a major change in Montana law, he stated. He said it presents a new cause of action for the plaintiffs bar. But, because of the quality of the plaintiffs bar, he felt they would continue to be successful without the advantage of Martel. The code has been a standard for many years and should continue. He called attention to the amendment added in the house and called attention to the last part, behind the comma, where the important part occurs. He said the legislature should say "no, we don't want to go in the direction of absolute liability in the area of utilities". He urged the state to continue as they had for 100 years and urged passage of the bill. He closed.

ADJOURNMENT

Adjournment At: 12:20 p.m.



SENATOR BRUCE D. CRIPPEN,
Chairman

BDC/rj
minrj.310

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-10-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN			✓
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

EXH

6

DATE

3-10-89

BILL NO.

HB 651

Amendments to House Bill 651
Requested by Rep. Spaeth
For the Senate Judiciary Committee

1. Page 2, line 1.

Strike: "."

Insert: "alleging a code violation."

POSITION PAPER RE: HB NO. 651

By Erik B. Thueson

I. OVERVIEW

House Bill 651 would allow negligence actions against electrical companies to be resolved simply by resort to the standards set forth in the National Electric Safety Code. It provides:

Proof of compliance with the requirements of applicable National Electric Safety Code standards establish due care in the defense of a negligence action.

This legislation should be opposed as it is not in the public interest. Specifically:

- (1) The finite number of standards set forth in the National Electric Safety Code cannot possibly cover all situations. As a result, if this bill passes, mere compliance with the Code will absolutely protect an electrical company from responsibility for injury -- even though its conduct has been unreasonable under all of the pertinent circumstances.
- (2) It is universally recognized that electricity is an extremely dangerous commodity. As a result, electrical companies are held to an extremely high standard of care to prevent injury. If this bill passes, an electrical company's responsibility to protect people and property will be greatly reduced, because it will only have to comply with the minimum standards of the NESC no matter how dangerous the situation.
- (3) Montana already has comprehensive and fair laws governing the legal responsibilities of electrical companies.

These points are discussed separately below.

II. POSITION

A. ADOPTION OF THE NATIONAL ELECTRIC SAFETY CODE AS A DEFENSE NEGLIGENCE WOULD CREATE DANGEROUS HAZARDS.

By definition, negligence is a failure to act reasonably and prudently under all of the circumstances.¹ For this reason, it is impossible to reduce the duty of negligence to a finite set of written standards, such as those found in the National Electric Safety Code.

In other words, there will always be situations having unique circumstances where compliance with the minimal safety standards of the National Electric Safety Code simply will fall far short of what is reasonable and prudent. Unfortunately, if House Bill 651 passes with its rule that the NESC standards "establish due care," a person who is injured or has his property destroyed in one of these situations will be denied justice, since the electrical company will escape the duty to compensate him even though under the unique circumstances, its conduct was, in fact, negligent.

Because of the inability to reduce negligence to a finite set of standards, virtually all of the states of the union have rejected attempts to establish the National Electric Safety Code as the standard of negligence. The rule is accurately stated in

¹See e.g., Prosser on Torts, §32.

one of the leading legal encyclopedias as follows:

An electrical company may be negligent even though it complied with the National Electric Safety Code, if it can be shown that something more ought to have been prudently done by the company. It has been held that although compliance with the minimum standards of such Code relieves the electrical company from a charge of negligence per se, such compliance is not conclusive where the particular circumstances justified a finding of lack of due care. Whether the company is negligent, even though it complied with the Code, is usually a question to be determined by the jury under proper instructions by the court.²

Attached hereto are some instances where courts have observed this rule. For instance, in Mississippi Power & Light Co. v. Walters,³ a man was electrocuted when his oil drilling equipment came into contact with a power line. The line complied with the ground clearance requirements of the National Electric Safety Code, but the power company knew that the area was frequented by oil drilling equipment, which was much higher than the size of equipment anticipated by the Code. The power company argued that its compliance with the National Electric Safety Code established its duty of care and therefore, it was not negligent as a matter of law. As the court stated:

The fact that the power lines had a basic clearance of approximately 20 feet, which was the minimum height prescribed by the National Electric Safety Code for terrain accessible to vehicle traffic, did not, in our opinion, necessarily indicate that the lines were so placed the company would have no reasonable cause to

²26 AM.JUR.2d ELECTRICITY, §45, p. 254 (emphasis added). A copy of this authority is attached as Attachment 1.

³158 So.2d Rptr. 2 (see Attachment 2).

anticipate that people working near or under the wire would come in dangerous proximity to them. Proof of compliance with the standards furnished by the National Electric Safety Code was not conclusive on the question of due care by the power company. Actionable negligence exists even though the utility involved⁴ has complied with the requirements of the Safety Code.

Yet, under House Bill 651, the electrical company would be able to avoid responsibility for electrocuting a man, even though it knew the drilling equipment used in the vicinity of the line created a severe hazard. Certainly, this would not be justice.

Other examples where the National Electric Safety Code was simply inadequate to constitute reasonable conduct are given in the Mississippi Power & Light Co. case. Still another example appears in Cronk v. Iowa Power & Light Co.,⁵ where the electrical company knew that a construction crew was working in the vicinity of their high voltage unprotected lines for several months, but did nothing to protect them or warn them.

It is easy to see how Montana citizens can be injured, even though there is compliance with the National Electric Safety Code. For instance, there obviously will be instances where men will be working with large items of farming equipment in the vicinity of high voltage power lines. If a power company is aware of that, it

⁴Id. at 18.

⁵138 N.W.2d 843 (see Attachment 3). Some other cases include Adam v. T.I.P. Rural Elec. Co-Op, 271 N.W.2d 896 (Iowa 1978); Rotramel v. Pub. Serv. Co., 546 P.2d 1015 (Okla. 1975); City of Elizabethton v. Sluder, 534 S.W.2d 115 (Tenn. 1976).

may be necessary for them to construct their lines higher or in such a way that the farming equipment does not come into contact with the lines even though the protection is greater than that dictated by the NESC. Another example would be power lines and towers in the vicinity of an elementary school. The lines might be in full compliance with the National Electric Safety Code, but further protection might be needed because of the number of small children in the area that would be attracted to the lines. Again, passage of House Bill 651 would allow the electrical company to escape responsibility for its negligence or lack of due care, simply because it complied with the National Electric Safety Code.

In summary, the inability of the standards of the National Electric Safety Code to cover all situations requires that this Bill be defeated in order to protect the people of Montana.

B. ESTABLISHING THE NESC AS THE MAXIMUM STANDARD OF CARE IS TOTALLY INAPPROPRIATE ON THE SUBJECT OF ELECTRICITY.

The National Electric Safety Code merely sets the minimum standard for construction and maintenance of electrical lines. It would be totally contrary to the public interest to legislatively decree that they should not become the maximum standards and that compliance with them would allow an electrical company to escape its responsibility for failing to use reasonable care. This is because electricity is recognized to be one of the most dangerous commodities known to mankind and therefore, greater care and prudence must be exercised by those who deal with it.

"Distribution of electrical energy is an inherently dangerous enterprise and power companies are required to exercise a high degree of care to see that their wires are properly placed and insulated." Dealing with the commodity of electricity is analogous to "operation of a fire range or handling of explosives."⁶ A set standard of care, such as the written standards of the National Electric Safety Code should not become the maximum standard required by an electrical company because of these high dangers. This is because as the "danger increases, so does the degree of care increase which is required of persons who are handling" electricity.⁷

If House Bill 651 passes, electrical companies will not have to observe the fact that they have a high standard of care because they deal with a dangerous commodity. They need only refer to the National Electric Safety Code and will be immune from liability for highly dangerous situations caused by the environment or social situations, simply because they complied with the written rules. As such, provisions of House Bill 651 are not in the public interest.

⁶Spence v. Commonwealth Edison Co., 340 N.E.2d 550, 556 (Ill. 1976).

⁷Bourke v. Butte Elec. & Power Co., 33 Mont. 267, 83 P. 470

C. CURRENT RULES FOR ESTABLISHING THE NEGLIGENCE OF AN ELECTRICAL COMPANY ARE ADEQUATE.

The current rules of law governing the negligence of an electrical company are fair and adequate.

First, the current rules recognize that if an electrical company's conduct falls below the standards set forth in the National Electric Safety Code, their conduct will be deemed negligence as a matter of law and the injured party need only prove the extent of his or her damages.⁸ This is a fair rule. Electrical companies should be found responsible if their conduct does not comply with the minimum standards of their industry.

Second, Montana law also recognizes that there are situations where mere compliance with the National Electric Safety Code is not enough and because of the dangerous nature of electricity, an electrical company may be required to do more in order to act reasonably and prudently and thus, escape liability for negligence.⁹ Thus, the law recognizes that there are instances where the National Electric Safety Code will not allow a power company to escape negligence.

At the same time, Montana law does not place an impossible standard upon electrical companies. They are not considered insurers of public safety, and therefore, cannot be found

⁸Martel v. Mont. Power Co., 752 P.2d 140 (Mont. 1987).

⁹E.g., Ogden v. Mont. Power Co., 747 P.2d 201 (Mont. 1986).

responsible for damages unless it can be proved they acted unreasonably. As stated in a recent case, "reasonable care is all that is required. But this must be proportionate to the risk to be apprehended and guarded against."¹⁰

Thus, Montana law is comprehensive. It recognizes that reasonable care has to be decided in light of all of the circumstances. It cannot be decided by a standard set of rules as set forth in the National Electric Safety Code.

¹⁰Id.

unless such practice is consistent with due care.¹⁴ Thus, conformity by an electric company to the general custom of power companies with relation to the manner of maintaining power lines in rights-of-way does not excuse the company from liability from its acts unless the practice is consistent with due care.¹⁵ The effect of compliance with other standards or customs in the installation and care of electric wires and equipment is discussed in subsequent subdivisions of this article.¹⁶

An electric company may be negligent even though it complied with the National Electrical Safety Code, if it can be shown that something more ought to have been prudently done by the company.¹⁷ It has been held that although compliance with the minimum requirements of such code relieves the electric company from a charge of negligence per se, such compliance is not conclusive where the particular circumstances justified a finding of lack of due care.¹⁸ Whether the company is negligent, even though it complied with the code, is usually a question to be determined by the jury under proper instructions by the court.¹⁹

The question of the existence of a usage or custom which is relied upon to rebut a charge of negligence is for the jury where it depends upon oral testimony.²⁰ If the evidence of conformity to usual custom and practice in regard to a particular duty of the electric company is accepted and believed

Annotation: 68 ALR 1409, 1435.

In determining whether a company engaged in the transmission of electricity has met the degree of care required, it is proper to consider the use by such company of the methods customarily used in the industry, but the use of such methods is not a complete defense to a charge of negligence, but may be shown as demonstrating that the company used the degree of care which prudent men engaged in the industry would use under similar circumstances. *Murphy v Central Kansas Electric Co-op. Asso.* 178 Kan 210, 284 P2d 591.

Where a heavily charged electric wire broke, not under unusual circumstances, and the plaintiff came in contact therewith, the doctrine of *res ipsa loquitur* being held to apply, it was ruled that a verdict for the plaintiff could not be disturbed upon mere proof that the defendant had employed usual and modern methods and that its wire was standard and good. *Simmons v Commonwealth Edison Co.* 203 Ill App 367.

14. *Chase v Washington Water Power Co.* 62 Idaho 298, 111 P2d 872.

15. *Ireland-Yuban Gold Quartz Mining Co. v Pacific Gas & Electric Co.* 18 Cal 2d 557, 116 P2d 611.

16. §§ 104 et seq., *infra*.

17. *Johnson v Monongahela Power Co.* 146 W Va 900, 123 SE2d 81.

18. *Galloway v Singing River Electric Power Asso.* 247 Miss 308, 152 So 2d 710.

Compliance with valid rules and regulations

of the state public service commission, which incorporated and adopted certain minimum requirements of the National Electrical Safety Code with regard to the external installation of electrical equipment, would meet the standard of care and duty required, unless other circumstances appear which would require additional care in order to comply with the requirement to use ordinary care in the attendant circumstances. *Johnson v Monongahela Power Co.* 146 W Va 900, 123 SE2d 81.

19. *Johnson v Monongahela Power Co.* 146 W Va 900, 123 SE2d 81.

An instruction that if the power company maintained its wire at a height in compliance with the requirements of the state public service commission and the National Safety Code and in such a height and manner that the power company in the exercise of the highest degree of care could not reasonably have anticipated that persons would come in contact with the wires, verdict must be for the power company, was held not prejudicial as telling the jury that by compliance therewith the power company had discharged its duty, because the instruction as given required the jury to find more than compliance with the height requirements of the public service commission and the safety code, and in view of the fact that a further instruction was given that such requirements were minimum standards and that the defendant was required to exercise the highest degree of care under the circumstances. *Gladden v Missouri Public Service Co. (Mo)* 277 SW2d 510.

20. *Fox v Keystone Teleph. Co.* 326 Pa 420, 192 A 116, 110 ALR 1182.

by the jury, the plaintiff.

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1. *Fox v Ke*

2. *Arkansas- Ark* 686, 262

Annotation: ALR2d 127,

3. *Griffith v Co.* 72 Vt 4- 60 Wash 356

If by reaso or other fac greater care t the distribute sonable effor ods, and equ the increased sas Electric 2d 591.

Practice A where curre safety devic 8:37.

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Safety Code, which had been approved as the standard of construction by the Mississippi Public Service Commission; that the wires had a basic clearance of approximately 20 feet, which was the minimum height prescribed by the National Electrical Safety Code for terrain accessible to vehicular traffic; and that there was no requirement in the Safety Code that distribution lines be insulated under the conditions which prevailed at the oil well site. And the appellant's attorneys cite in support of their contention on that point the cases of *Tullier v. Gulf States Utilities Company* (Dist.Ct.La.1963), 212 F.Supp. 613, and *Reed v. Duquesne Light Company* (1946), 354 Pa. 325, 47 A.2d 136.

But the decision of the court in each of those cases was based upon a state of facts entirely unlike the facts in the case that we have here. In the *Tullier* case the record showed that a billboard maintenance crew member was injured when a metal ladder held by him touched the power company's high voltage wire which passed overhead at a height of 32 feet. The complainant admitted that he knew the wires were there, but "just paid no attention to them." The Court held that this was negligence causing the accident and injuries complained of, and the complainant's demands were therefore denied. In the *Reed v. Duquesne Light Company* case the record showed that the plaintiff's decedent was an employee of the American Bridge Company, who was killed on May 29, 1943. The high-tension lines involved in that case had been installed by the Light Company in May 1942 over the property of the Bridge Company on orders from the latter and for its service. When the lines were installed the Bridge Company specified the land over which they were run as an inactive area as indeed it was. The ground was waste land with no building or structure of any kind erected thereon and unused for any purpose. The high-tension lines were elevated on poles at a height of 36 feet above the ground. The plaintiff's decedent was killed by electrocution on May 29, 1943, while

helping to remove some telephone wires which were lying on the ground in proximity to the power lines. The crane which was being used in removing the phone poles was the property of the Bridge Company and under the control of its employees. There was no suggestion that the Light Company had actual knowledge of the use being made by the Bridge Company of its land lying underneath the power lines at the time the fatal accident occurred. The Court simply held that the facts in the case afforded "no basis for fictionally imputing to the Light Company notice of the danger created by the cranes."

[5] The fact that the appellant's power lines in this case had a basic clearance of approximately 20 feet at the time of the plaintiff's injury, which was the minimum height prescribed by the National Electrical Safety Code for terrain accessible to vehicular traffic, did not, in our opinion, necessarily indicate that the lines were so placed that the company would have no reasonable cause to anticipate that people working near or under the wires would come into dangerous proximity to them. Proof of compliance with the standards furnished by the National Electrical Safety Code is not conclusive on the question of due care by the Power Company. Actionable negligence may exist even though the utility involved has complied with the requirements of the Safety Code.

In *Galloway v. Singing River Electric Power Association, Inc.*, supra, this Court held that a utility's compliance with the minimum safety requirements of the National Electrical Safety Code with respect to power lines relieves it of the charge of negligence per se, but compliance is not conclusive on the question of due care when the particular circumstances justify a finding of lack of due care. In its opinion in that case the Court said: "The National Electric Safety Code contains minimum requirements and constitutes guiding principles in the construction and maintenance of electric power lines. It is not conclusive on

the question of due care by the utility. Compliance with the safety code is a relevant fact on the question of due care. If appellee had failed to comply with the minimum requirements of the National Electric Safety Code it would probably be chargeable with negligence per se, and compliance relieves the utility of that charge. We hold that compliance with the minimum standards contained in the National Electric Safety Code is not conclusive on the question of due care when the particular circumstances justify a finding of lack of due care. *Elliott v. Black River Electric Cooperative*, 233 S.C. 233, 104 S.E.2d 357, 74 A.L.R.2d 907; *Anno*. 69 A.L.R. 127, et seq. Whether a utility is negligent despite compliance with the Safety Code is ordinarily a question for the jury. *Johnson v. Monongahela Power Co. (W.Va.)*, 123 S.E.2d 81."

In *Kingsport Utilities, Inc. v. Brown*, supra, a judgment for the plaintiff was upheld although it appeared that the original installation of the defendant's wires was in accordance with the National Electrical Safety Code, the court stating that the fact that the line when constructed was in accordance with the minimum standards of the electrical code did not necessarily indicate that it would be safe under changed conditions, and concluding that at least a question of fact about which reasonable men might differ was presented as to whether the utility was negligent in view of the growing nature of the area.

The courts in numerous cases have held the power company liable for damages on the theory that its uninsulated high-tension wires were not maintained at a sufficient height under all the circumstances. *McGinnis v. Delaware, L. & W. R. Co.* (1922), 98 N.J.L. 160, 119 A. 163; *Neumann v. Interstate Power Co.* (1929), 179 Minn. 46, 228 N.W. 342; *Mississippi Power & Light Co. v. Whitescarver* (1934), (C.A. 5th Miss.), 68 F.2d 928; *Sandeen v. Willow River Power Co.* (1934), 214 Wis. 166, 252 N.W. 706; *Southwestern Gas & Electric Co. v. Hutchins* (1934), Tex.Civ.App., 68

S.W.2d 1085; *Walpole v. Tennessee Light & Power Co.* (1935), 19 Tenn.App. 352, 89 S.W.2d 174; *Lozano v. Pacific Gas & Electric Co.* (1945), 70 Cal.App.2d 415, 161 P.2d 74; *Chatfield v. New York State Gas & Electric Co.* (1944 Sup.), 57 N.Y.S.2d 406; *Beck v. Monmouth Lumber Co.* (1948), 137 N.J.L. 268, 59 A.2d 400; *Pike v. Consolidated Edison Co.* (1951), 303 N.Y. 1, 99 N.E.2d 885, revg. 277 App.Div. 1120, 10 N.Y.S.2d 892; *Northern Virginia Power Co. v. Bailey* (1952), 194 Va. 464, 73 S.E.2d 425; *Southern Pine Electric Power Ass'n. v. Denson* (1952), 214 Miss. 397, 57 So.2d 859; *Elliott v. Black River Electric Co-op.* (1958), 233 S.C. 233, 104 S.E.2d 357, 74 A.L.R.2d 907; *Rogers v. Chattanooga* (1954), supra; *4-County Electric Power Ass'n. v. Clardy*, supra; *Grice v. Central Electric Power Ass'n.* (1957), supra.

In the case of *Southern Pine Electric Power Ass'n. v. Denson*, supra, this Court held that it was a question for the jury whether it was actionable negligence for the power company to string its uninsulated high voltage power line only 25 feet from the water well and within 3 to 6 feet of being immediately above the well hole, when as a result thereof the plaintiff's decedent was electrocuted in withdrawing the pump line from the well. The Court in that case said: "Electricity is a highly dangerous agency, and it must be denominated negligence to erect so close to the well a high voltage line, unless insulated, or unless, in the exercise of the highest degree of care, it was strung high enough off of the ground reasonably to prevent injury to him." In *4-County Electric Power Association v. Clardy*, supra, which was an action for damages for personal injuries sustained by the plaintiff, a well driller and repairer, as a result of the plaintiff coming in contact with the defendant Power Association's high voltage lines, the Court held that the evidence was sufficient to sustain a finding that the defendant had been negligent in constructing and maintaining its lines almost directly over a drilled well and only 25 feet from the ground.

decedent was rolling over and his feet hung over the bank of the creek. He further testified the boom was pretty close to the wires, but it didn't look like it made contact and his best judgment was that the boom did not touch the wire.

Defendant's transmission lines were located in the street south of the traveled portion thereof; decedent was lawfully in this right of way installing the water main.

This evidence would warrant a finding that "under favorable physical, weather and atmospheric conditions current will arc or jump from a line transmitting electricity to an object in close proximity to it but which is not in actual contact with it. In such a case the object becomes energized and anyone coming in contact with it will, if grounded, receive an electric shock. The court finds that this is what happened on September 12, 1957, when the decedent lost his life. The projecting arm or boom of the crane, although not in actual contact with the wire, became energized as a result of the arcing or jumping of the current and when the decedent pushed the bucket the electricity passed through his body."

The court further found that "* * * in the exercise of ordinary care the defendant could not ignore the right of Des Moines Water Works and the employees or servants to lay water mains in the streets * * in proximity to the defendant's transmission lines. An ordinarily careful and prudent person engaged in the business of producing and transmitting electricity would, *under the circumstances existing in this case*, have protected its wires or cables in the area where the accident in this case occurred with an insulating material which would have prevented electricity from arcing or jumping from them. This was not done and because of such failure the decedent lost his life." (Emphasis supplied)

The court then concluded "* * * under the circumstances * * * an ordinarily careful and prudent person would have protected his transmission lines or

cables at the place where the accident occurred by insulating them with such material as would have prevented current from escaping by means of arcing or jumping and that the defendant * * * failed so to do. Such failure constitutes negligence."

Exhibit 10 indicates the lower set of defendant's transmission lines were elevated 20 feet 9 inches.

Plaintiff alleged six specifications of negligence in paragraph seven, stating: "That the defendant was negligent in the construction, maintenance and operation of the said power transmission line *in the said location* in the following particulars:" (Emphasis supplied). The question of insulation was raised in subparagraphs (b) "in not properly grounding and protecting the said overhead wires" and (f) "in failing to construct, maintain and operate said transmission line in conformity with accepted standards of care and prudence observed in the industry, and required by law." The court determined the other grounds of negligence asserted could not be sustained.

Specifications for materials to be used for insulating wires carrying heavy electrical current had not been approved by the city council of Des Moines prior to September 12, 1957, as required by section 18-58 of the Municipal Code.

[3] Aside from any provision in the city ordinance it was the duty of defendant to use reasonable care to prevent the escape of electricity from its lines in such way as to cause injury to persons who might lawfully be in the area of danger incident to the escape of electricity from such lines. *Knowlton v. Des Moines Edison Light Co.*, 117 Iowa 451, 455, 90 N.W. 818, 819.

[4] It is the duty of a person or corporation that maintains and controls wires or cables for the furnishing of electricity to others, to carefully and properly insulate

their wires at all places where there is a likelihood or reasonable probability of human contact by persons whose business or duty, or rightful pursuit of mere diversion or pleasure brings them without contributory fault on their part into the zone of danger. However, in the absence of statute or municipal ordinance, this duty does not compel the company to insulate or adopt safeguards for their wires everywhere but only at places where people may legitimately go for work, business or pleasure—that is, where they may reasonably be expected to come in proximity to them. *Knowlton v. Des Moines Edison Light Co.*, 117 Iowa 451, 455, 90 N.W. 818; *Toney v. Interstate Power Co.*, 180 Iowa 1362, 1368, 163 N.W. 394; *Graves v. Interstate Power Co.*, 189 Iowa 227, 232, 178 N.W. 376; 29 C.J.S. Electricity, § 44, page 1086; 18 Am. Jur., Electricity, section 97, pages 491, 492; *Curtis on Law of Electricity*, section 510.

[5] The law is well settled in this state that one furnishing electricity, while not an insurer, is held to the highest degree of care consistent with the conduct and operation of the business. The defendant had the duty to use reasonable care commensurate with the danger to prevent the escape of electricity from its lines. *Walters v. Iowa Electric Co.*, 203 Iowa 471, 474, 212 N.W. 884; *Evans v. Oskaloosa Traction and Light Co.*, 192 Iowa 1, 5, 181 N.W. 782.

I. Appellant asserts in support of its first assignment of error as a brief point, "The duty of a utility company to insulate its wires is not absolute nor does it extend to all parts of the system; being limited to places where people in the exercise of ordinary care may be reasonably expected to go for work, business or pleasure," and in written argument states, " * * * the proposition we urge—against total insulation, but requiring it where people might be reasonably expected to go in their business, work, as incidental pursuits * * * "

This is all the trial court found. In its tenth finding and first conclusion the

words, "under the circumstances existing in this case" are used. Plaintiff in paragraph seven alleged "in the said location".

Adams testified on cross-examination he was familiar with exhibit 11, the National Electrical Safety Code, and shortly after the tragedy occurred studied the installation in question, comparing it with the applicable provisions of the code, and found no violation in defendant's construction.

[6-8] Compliance with the safety code is a relevant fact on the question of due care. Proof of compliance with the standards furnished by the National Electrical Safety Code was not conclusive on trier of the fact on question of defendant's due care. Actionable negligence may exist even though the utility involved has complied with the requirements of the safety code. It is not conclusive on the question of due care by the utility. Whether a utility is negligent despite compliance with safety code is ordinarily a question for the jury or trier of fact. *Mississippi Power & Light Company v. Walters*, 248 Miss. 206, 158 So.2d 2, 160 So.2d 908; 29 C.J.S. Electricity § 68, page 1167.

[9] We have stated what we believe to be defendant's duty. The trier of fact found under the circumstances existing in this case in the area in question, defendant had not exercised ordinary care in performance of that duty; therefore, defendant was negligent.

From the facts detailed herein, such findings were justified.

[10-12] II. Negligence to be actionable must be a proximate cause of the injury. Proximate cause is any cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the result complained of and without which the result would not have occurred. It is a primary moving cause or predominating cause from which the injury flows as a natural, direct and immediate consequence and without which it would

OPPOSITION TO HOUSE BILL 651

By Robert M. Peterson, Attorney at Law

There are many reasons that House Bill 651 should be opposed. The one foremost in my mind is that it is class legislation, which allows electrical companies to, in essence, write their own rules, which may be totally unreasonable.

It is axiomatic that the law must be "the same for all persons, since the law can have no favorites." The problem with House Bill 651 is that it indicates that electrical companies are a favorite under the law. The conduct of all other citizens in the State of Montana is judged by whether or not they acted reasonably and prudently under all of the circumstances. They are not allowed to resort to a fixed set of standards set forth in a book and claim that compliance with the minimum standards excuses their unreasonable conduct. If House Bill 651 passes, however, electrical companies will be given this privilege.

The dangers of House Bill 651 are particularly grievous, since electrical companies have a great deal of influence over what the standards will be as set forth in the National Electric Safety Code. Can anyone believe that the electrical industry will be unbiased and will set stringent safety rules against itself? Yet, House Bill 651 will allow the electrical industry to write its own laws regarding negligence.

In summary, the "standard of conduct which the community demands must be an external and objective one, rather than the

individual judgment, good or bad, of the particular actor." The danger of House Bill 651 is that it allows the "particular actor" -- in this case the electrical industry -- to determine its own standard of care. No one else has this right. It puts power companies in a very privileged class.

Testimony of Michael I. Sherwood, MTLA
OPPOSING House Bill No. 651

Jury

Electricity is dangerous. Statistics from a June 5, 1987 study by the Consumer Product Safety Commission indicate that:

In 1984 approximately 240 people per year were electrocuted in or around their homes.

In 1985 electricity contributed to 174,000 residential structural fires attended by fire services. These fires resulted in an estimated 950 civilian deaths, 5,500 civilian injuries and \$1.2 billion dollars in property losses. This accounts for one in every four residential fires.

The number of civilian deaths in 1985 was up by nearly 200 over 1984. Fires in installed wiring were the only major contributor to the overall fire death increase. In 1984 110 people were killed in fires resulting from installed wiring. In 1984 this number had risen to 170.

The National Fire Prevention Association(NFPA) reports that from 1982 to 1986 440 people were killed in industrial fires caused by electricity , 1800 people were injured and a damage loss of \$779.2 million dollars was incurred. The total number of fires was 73,400.

ex. #9
pg 2
3/10/89

industry code to establish by reference, a standard of dangerous for two reasons:

stry code sets only minimum standards. Paragraph 010. of the Introduction to the Code sets forth the purpose,

BY CONTAIN MINIMUM PROVISIONS CONSIDERED
RY FOR THE SAFETY OF EMPLOYEEES AND THE PUBLIC. "

lation of this kind encourages those responsible for arguably acts to lobby for changes in the code which erode its

This is exactly what has happened to the National Safety Code. In 1977 two very specific provisions which to all aspects of the code were present:

ection 21, Paragraph 210: All electric supply and unication lines and equipment shall be of suitable design and tion for the service and conditions under which they are to erated.

Section 21, Paragraph 211: All electric supply and unication lines and equipment shall be installed and ined so as to reduce hazards to life as far as is practical.

e provisions were more than reasonable in light of the danger nted to workers, homeowners, farmers, ranchers, and ordinary ens when around electrical transmission lines. The need for e general provisions is especially acute because the code does not y to all conceivable types of electrical installations and ations. By 1987, however, both provisions had been deleted from e code.

MTLA

SENATE JUDICIARY

EXH BIT NO. 10

DATE 3-10-89

BILL NO. HB 651

American National Standard

national electric safety code

**1977
edition**



american national standards institute, inc.

Feb 28, 1977

SH06767

3. Dead ends of busway shall be closed.
 4. Busways should be marked with the voltage and current rating for which they are designed, in such manner as to be visible after installation.
- B. Isolated Phase Bus
1. The minimum clearance between an isolated-phase bus and any magnetic material shall be the distance recommended by the manufacturer to avoid overheating of the magnetic material.
 2. Non-magnetic conduit should be used to protect the conductors for bus alarm devices, thermocouples, space heaters, etc if routed within the manufacturer's recommended minimum distance to magnetic material and parallel to isolated-phase bus enclosures.
 3. When enclosure drains are provided for isolated-phase bus, necessary piping shall be provided to divert water away from electrical equipment.
 4. Wall plates for isolated-phase bus shall be non-magnetic, such as aluminum or stainless steel.
 5. Grounding conductors for isolated-phase bus accessories should not be routed through ferrous conduit.

Section 19. Surge Arresters

190. General Requirements

If arresters are required, they shall be located as close as practical to the equipment they protect.

191. Indoor Locations

Arresters, if installed inside of buildings shall be enclosed or shall be located well away from passageways and combustible parts.

192. Grounding Conductors

Grounding conductors shall be run as directly as possible between the arresters and ground and be of low impedance and ample current-carrying capacity (see Section 9 for methods of protective grounding).

193. Installation

Arresters shall be installed in such a manner and location that neither the expulsion of gases nor the arrester disconnector is directed upon live parts in the vicinity.

PART 2. Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines

Section 20. Purpose, Scope, and Application of Rules

200. Purpose

The purpose of Part 2 of this code is the practical safeguarding of persons during the installation, operation, or maintenance of overhead supply and communication lines and their associated equipment.

201. Scope

Part 2 of this code covers supply and communication conductors and equipment in overhead lines. It covers the associated structural arrangements of such systems and the extension of such systems into buildings. The rules include requirements for spacing, clearances, and strength of construction. They do not cover installations in electric supply stations.

202. Application of Rules

The general requirements for application of these rules are contained in Rule 013. However, when a structure is replaced, the arrangement of equipment shall conform to the current edition of Rule 238C.

Section 21. General Requirements

210. Referenced Sections

The Introduction (Section 1), Definitions (Section 2), References (Section 3) and Grounding Methods (Section 9) shall apply to the requirements of Part 2.

211. Number 211 not used in this edition.

MTLA

SENATE JUDICIARY

EXHIBIT NO. 12

DATE 3-10-89

BILL NO. HB 651

Proposed Amendments to House Bill No. 651
Michael Sherwood, MTLA

Page 1, Line 23:

Strike: "Proof of"

Insert after "commission": "Although"

Page 1, Line 25 and Page 2, Line 1:

Strike: "establishes due care in the defense of a negligence action."
Add, after "standards": "relieves a party from a charge of negligence per se, such compliance is not conclusive where the particular circumstances justify a finding of lack of due care."

So that the last sentence of the bill would read:

~~Proof of Although~~ compliance with the requirements of applicable national electrical safety code standards ~~establishes due care in the defense of a negligence action~~ relieves a party from a charge of negligence per se, such compliance is not conclusive where the particular circumstances justify a finding of lack of due care.

01341

Section 1: Introduction to the National Electrical Safety Code

010. Purpose

The purpose of these rules is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and their associated equipment. They contain minimum provisions considered necessary for the safety of employees and the public. They are not intended as a design specification or an instruction manual.

011. Scope

These rules cover supply and communication lines, equipment, and associated work practices employed by an electric supply, communication, railway, or similar utility in the exercise of its function as a utility. They cover similar systems under the control of qualified persons, such as those associated with an industrial complex.

They do not cover installations in mines, ships, railway rolling equipment, aircraft, or automotive equipment, or utilization wiring except as covered in Parts 1 and 3.

012. General Rules

All electric supply and communication lines and equipment shall be designed, constructed and maintained to meet the requirements of these rules. For all particulars not specified in these rules, construction and maintenance should be done in accordance with accepted good practice for the given local conditions.

013. Application

A. New Installations and Extensions

1. These rules shall apply to all new installations and extensions, except that they may be waived or modified by the administrative authority. When so waived or modified, equivalent safety shall be provided in other ways, including special work methods.

DATE March 10, 1984

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
DICK BOUTILIER	8th JUD. YOUTH CT	350	X	
AS HANSON	MT TECHNICAL COUNCIL	H-651	X	
Clayton Bain	Montana Board of Crime Control	HB 598	X	
BARRY L BORT	USWC	7+13651	X	
GENE PHILLIPS	PACIFIC POWER & LIGHT NORTHWESTERN TEL	HB 651	X	
JAMES C. NELSON	CUT BANE GLACIER ELECTRIC COOP	HB 651	X	
Robert L O'Leary	mt Power - Route	"	X	
Tim Shanks	Great Falls Police Dep.	HB 349	X	
LARRY RENMAN	GREAT FALLS POLICE DEPT	HB 349	X	
Mona Jamison	Mt. Juvenile Detention	350	X	
Tim Shanks	Great Falls Police Dept	HB 351	X	
John Stamps	" "	HB 351	X	
Chuck O'Rulby	Mt Sheriff's Peace Officers	H 351 H 598	X	
VERNA ROLAND	LOWER YELLOWSTONE BURNING FLOOR S.D. WY	HB 651	X	
FED NEUMAN	COUNCIL OF LOOPS mt Petroleum mkt's	HB 651	X	
Erik Thuesen	Self	HB 651		X
Robert Peterson	Self	HB 651		X
Michael Sherwood	MTLA	HB 651		X
JAY DOWNEN	MECA/MTA	HB 651	X	
Phyllis Dreaen				
John Alk	MODU	HB 651	X	

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 13,
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Mike Halligan, Loren
Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill
Yellowtail

Members Excused: Senators Bob Brown and John Harp

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 489

Presentation and Opening Statement by Sponsor:

Representative Jim Rice of Helena, District 43, opened the hearing. He said the reading of the title may cause some confusion, but it simply meant "bomb threat." The title read "an act deleting the transmission of a false report or warning of an impending explosion from the list of acts that constitute disorderly conduct. The proposal would make the act a felony for many good reasons, he said. He said it would delete the offense as a misdemeanor, he said. The need had arisen out of school bomb threats which cause fear and are interruptive. County attorneys across the state will still have the discretion to plea bargain as they see fit, he commented. The bill was to make a statement, he said, about the seriousness of bomb threats.

List of Testifying Proponents and What Group they Represent:

Bruce Moerer, Montana School Boards Association

HOUSE BILL 350

Discussion: Senator Mazurek said there had been some concern that limits and amounts of fees were different. He asked that the standing committee report be held until he had some time to review the bill further.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 350 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 351

Discussion: Senator Halligan said he was concerned that there was no definition for "rifles" in statute.

Recommendation and Vote: Senator Halligan MOVED that House Bill 351 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 598

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 598 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 651

Discussion: Chairman Crippen said that Mike Sherwood had submitted new amendments (Exhibit 5) for House Bill 651 as he sensed that the committee was not interested in the original amendments. Mr. Leary, he said, had spoken as though he objected to the "laundry list" approach, but he did indicate that the bill should not apply to the exemptions Mike had listed. Mike felt that the injured victim would be the one who suffered from the "laundry list" approach. He said he had gone through the list and condensed it as best as he could. He felt the amendments addressed the intention as stated by Mr. Leary. He commented that he was concerned there may be some inconsistency. If a section requires 20-ft. high power lines .030 might override that requirement. Then, in a situation where cranes were being moved that were 40 ft., the amendment would apply.

Carla Gray said she had just received the amendments and had little time to study them. Her initial response was that the Spaeth amendments were more acceptable than either set of amendments offered by Mr. Sherwood. She said the Spaeth amendments were more straightforward, less wordy and didn't bring in unrelated matters to the NECA safety codes. She felt they clarified what the bill did as opposed to the infinity of things that it does not do. She recommended that the Spaeth amendments be adopted. She mentioned that if "due care" was established under one code, she didn't feel it would be in violation with another code. She also had a problem with a deletion of "safety" in about the 7th line of the amendment. She wondered if there was some unknown intent of that.

Barry Hjort said he agreed with Carla Gray's testimony.

Senator Pinsoneault said he didn't know how a judge could phrase a decision using the MTLA amendment. He suggested inserting "due care" on line 25.

Carla Gray said that would "gut the bill" and take away the balance they were attempting to establish with relation to the second portion of the Martell decision. She said that the industry would be left in a situation where a lack of compliance would be "negligence" per se, and compliance by the industry would not constitute defense to that violation of the NESC standards.

Senator Mazurek asked if the Spaeth Amendment would put Montana outside of the mainstream so far as safety laws were concerned. Barry Hjort said he didn't know.

Senator Crippen said he would be inclined to agree with Carla Gray's comments.

Mike Sherwood said that one specific code section said that lines were to be inspected, and another sections that said lines are to be inspected once a year, and yet another section said that construction and maintenance should be done in accordance with accepted practice. He felt that the Senator's opinion was that compliance with the law that says inspection is done once a year isn't going to let you out of one of the other requirements. Mike said the supreme court might not agree with that opinion unless the language was inserted.

Senator Crippen asked if Mr. Sherwood thought one section contradicted the other -- one requires one-year inspections

and the other requires less than a year. Mike said his amendment does not contradict what Senator Crippen said, but just made it more clear. He said he had a legitimate concern regarding this language. He felt his amendment clarified the intent.

Senator Crippen asked if Mike agreed with the Spaeth amendments and he answered that they help.

Senator Yellowtail asked how Carla Gray would feel if part of the Sherwood amendment were used, specifically, "alleging a violation of that standard" rather than "allege a code violation." Carla said she wouldn't have a particular problem with that. She said that, in the drafting of the Spaeth amendments, they used "violations" (plural) because earlier on in statute, it mentioned "requirements of NESC standards." It was just an attempt to stay with the plural reference in existing statute.

Senator Mazurek asked about "proof of compliance is a requirement of applicable NESC standards." He asked if "due care" was in defense of the negligence action or alleging a code violation. If a person alleged a code violation, wouldn't the bill create a defense of the entire action, he asked. Carla said that was correct. But, she stated, she felt he was suggesting that there might be a complaint which has alternative counts: One might be a code violation - negligence per se - and one might be a common law negligence count. She said the intent was a defense to a negligence per se result from an NESC violation. She suggested he read on in the Spaeth amendment "action alleging a code violation." She didn't think it would "flop" over.

Senator Crippen asked if "action" would be plural. Mike agreed with the senator's concern. He said he would prefer to leave in the language of the first sentence in the MTLA amendment. He felt the singular made it more clear.

Carla said she had no problem with Senator Yellowtail's suggestion. But it occurred to her, she said, that if there was any argument to be made, sections of the code were in fact "standards" and other segments might be introductory if singular were used.

Amendments and Votes: Senator Yellowtail MOVED to adopt amendments of MTLA (EX. 5) to the end of "standard" and in addition on p. 2, line 1, strike "action" and insert "claim".

Mike Sherwood he agreed with Senator Yellowtail's intent. Senator Halligan said he preferred the Spaeth Amendments.

Valencia read Senator Yellowtail's amendment. Senator Mazurek said the amendment would take this statute out of the construction context and put it in a civil claim setting.

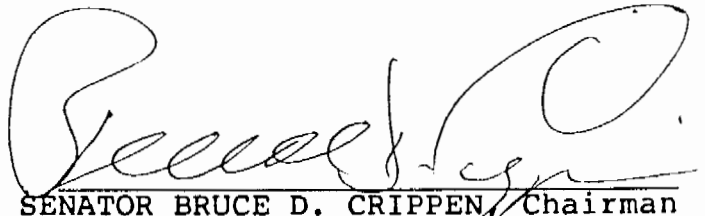
The amendment CARRIED by a vote of 7 to 2 with Senators Jenkins and Halligan voting NO.

Recommendation and Vote: Senator Brown MOVED that House Bill 651 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT: Chairman Crippen announced that the next meeting would be held in Room 413 (March 14).

ADJOURNMENT

Adjournment At: 12:07 p.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.313

51st LEGISLATIVE SESSION -- 1989

Date 3-13-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP			✓
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-13-89 House Bill No. 651 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	<i>absent</i>	
SEN. HALLIGAN		✓
SEN. HARP	✓	
SEN. JENKINS		✓
SEN. MAZUREK	✓	
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

7 to 2

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: ① Senator Yellowtail - amendment
(see minutes)

Second proposed amendment to HB 651
Submitted by Michael Sherwood, MTLA

Page 1, Line 24:

Insert after "of": "an"

Page 1, Line 25:

Strike the letter "s" at the end of the word "standards"

Page 2, line 1:

Insert after "action": "alleging a violation of that standard. Such proof does not establish due care in the defense of a negligence action alleging a failure to comply with another applicable standard of the national electrical safety code; another applicable industry standard; an applicable federal, state or local law or regulation; or a common law duty of due care not addressed by the national electrical safety code"

SO THAT THE AMENDMENT LANGUAGE IN 69-4-201 MCA WOULD READ:

"Proof of compliance with the requirements of AN applicable national electrical safety code standards establishes due care in the defense of a negligence action ALLEGING A VIOLATION OF THAT STANDARD. SUCH PROOF DOES NOT ESTABLISH DUE CARE IN THE DEFENSE OF A NEGLIGENCE ACTION ALLEGING A FAILURE TO COMPLY WITH ANOTHER APPLICABLE STANDARD OF THE NATIONAL ELECTRICAL CODE; ANOTHER APPLICABLE INDUSTRY STANDARD; AN APPLICABLE FEDERAL, STATE OR LOCAL LAW OR REGULATION; OR A COMMON LAW DUTY OF DUE CARE NOT ADDRESSED BY THE NATIONAL ELECTRICAL SAFETY CODE."

Amendments to House Bill 651
Requested by Rep. Spaeth
For the Senate Judiciary Committee

1. Page 2, line 1.

Strike: "."

Insert: "alleging a code violation."

SENATE STANDING COMMITTEE REPORT

March 14, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 651 (third reading copy -- blue), respectfully report that HB 651 be amended and as so amended be concurred in:

Sponsor: Spaeth (Bishop)

1. Title, line 5.

Following: "WITH"

Insert: "A"

Strike: "STANDARDS"

Insert: "STANDARD"

2. Title, line 6.

Strike: "ACTION"

Insert: "CLAIM ALLEGING A VIOLATION OF THAT STANDARD"

3. Page 1, line 24.

Following: "of"

Insert: "an"

4. Page 1, line 25.

Strike: "standards"

Insert: "standard"

5. Page 2, line 1.

Strike: "action"

Insert: "claim alleging a violation of that standard"

AND AS AMENDED BE CONCURRED IN

Signed 

Bruce D. Crippen, chairman

HB 651

SENATE

HOUSE BILL NO. 651

INTRODUCED BY SPAETH, GAGE, VAN VALKENBURG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COMPLIANCE WITH A NATIONAL ELECTRICAL SAFETY CODE STANDARDS STANDARD ESTABLISHES DUE CARE IN THE DEFENSE OF A NEGLIGENCE ACTION CLAIM ALLEGING A VIOLATION OF THAT STANDARD; AND AMENDING SECTION 69-4-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-201, MCA, is amended to read:

"69-4-201. Application of national electrical safety code. The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall furnish construction standards and shall be enforced by the public service commission. Proof of compliance with the requirements of AN applicable national electrical safety

code standards STANDARD establishes due care in the defense of a negligence action CLAIM ALLEGING A VIOLATION OF THAT STANDARD."

-End-